

Dissenting Views to H.Res. 287,
Directing the Attorney General to Transmit to the
House of Representatives Documents Related to Texas-Gate

We strongly disagree with the Majority's determination to report H. Res. 287 adversely. This matter desperately calls out for this Committee to exercise its oversight over the Department of Justice. The facts we have uncovered to date make out a prima facie case that the Department's law enforcement resources were used for partisan political purposes and that the Department has obstructed our efforts to find out the truth.

Background on H. Res. 287

H. Res. 287 was introduced by Rep. Gene Green (D-TX) on June 19, 2003 with fourteen co-sponsors.¹ The resolution directs the Attorney General to transmit to the House of Representatives all physical and electronic records and documents in his possession related to the use of Federal agency resources in any task or action involving the Members of the Texas Legislature in the period beginning May 11, 2003, and ending May 16, 2003. The resolution makes exceptions for information which if disclosed would harm the security interests of the United States. These records are required to be transmitted no later than 30 days after final adoption of the resolution.

On May 12, an official with the Texas Department of Public Safety (DPS) asked federal agents at the Air-Marine Interdiction Coordination Center based at the March Air Reserve Base to find what he described as a missing plane. In fact, the DPS official was looking for a plane belonging to Rep. Pete Laney, former Democratic speaker of the Texas House. Texas Republicans believed that finding Rep. Laney's plane would help them locate the 51 Texas Democrats who, in protest of a proposed Republican redistricting plan, fled the state capital to Ardmore, Okla., in order to deny Republican legislators a quorum.²

Reports suggest that a DPS official made a call to the March facility after Texas Republicans had sought the assistance of DPS officers in finding the missing Democratic legislators. The DPS should have been aware that the March center was under the jurisdiction of the Department of Homeland Security (DHS) and normally used to seek out terrorists.³

In response to the DPS officer's call, federal agents at the March center treated the request as urgent and used their radar technology to try to track the plane. In addition, March

¹ Rep. Jackson-Lee (D-TX) was an original co-sponsor.

²The Press-Enterprise (Riverside, CA), May 16, 2003.

³ *Id.*

agents made several phone calls to the Federal Aviation Administration's Fort Worth Center. After the FAA search failed to turn up the plane, the March officer gave the DPS officer the phone number of the FAA in order to initiate lost-aircraft procedures.

The reports of misuse of the Department of Homeland Security resources for a political dispute led members of Congress to request that the Office of Inspector General (OIG) investigate the matter.⁴ Letters were also drafted to Attorney General Ashcroft asking whether any law enforcement resources, "have been employed in any regard to this matter." Finally, these letters asked whether the use of these resources compromised in any way our national security.⁵ The Justice Department replied that it was not aware of any information pertinent to the Texas case that would warrant action by Federal law enforcement authorities and accordingly it had no plans to deploy law enforcement resources in connection with the matter.⁶ It was recently disclosed that the Justice Department's Office of the Inspector General is investigating this matter.⁷ We also learned as part of this OIG report that even House Republicans were dismayed at the abuse of federal government law enforcement resources, with Rep. Ken Calvert (R-CA) calling the AMMIC facility in Riverside to express his "shock that the AMMIC was involved in looking for the aircraft."⁸

During this time period, House Majority Leader Tom DeLay (R-TX) who had devised the redistricting plan, made many troubling comments to the press. On May 13, he told reporters that, "bringing in either U.S. Marshals or FBI agents is justified because redistricting is a federal issue, involving congressional seats."⁹ Moreover, Mr. Delay said the issue (of whether help could be sought from the FBI or U.S. Marshals on the grounds that the lawmakers crossed state lines and that redistricting is a federal matter) was being researched by a U.S. attorney in Texas whom he did not name."¹⁰ He also acknowledged having sought assistance from the Department of Justice.¹¹

⁴Office of Inspector General: Report of Investigation (INO3-LA-0662-S).

⁵Letter from Honorable Lloyd Doggett (D-TX) *et al.*, to the Honorable John Ashcroft, Attorney General of the United States, the Honorable Tom Ridge, Secretary of Homeland Security, and the Honorable Robert Mueller, FBI Director (May 14, 2003).

⁶Letter from Assistant Attorney General, Office of Legislative Affairs, dated May 16, 2003.

⁷Fort Worth Star-Telgram, June 27, 2003

⁸OIG Report, Exhibit 13, second paragraph from bottom.

⁹Houston Chronicle, May 13, 2003.

¹⁰Washington Times, May 14, 2003.

¹¹Dallas Morning News, June 27, 2003

Even more troubling, documents produced from a DHS-OIG investigation into the matter suggests that members of the Texas DPS might be involved in covering up the names of individuals that prompted the DPS to mislead the federal agents into using terrorism fighting resources for partisan purposes. This conduct may constitute violation of federal criminal laws pertaining to obstruction of justice. Indeed, the DHS-OIG report describes that DPS officers deliberately withheld names from federal investigators and may have shredded important relevant documents.¹²

As a result, Democratic members of the Judiciary sent a letter to Attorney General Ashcroft on June 18, formally requesting to open an immediate investigation into this conduct.¹³

Concerns with Committee's Decision to Report H.Res. 287 Adversely

It is clear to us that there are numerous issues to which the Justice Department has not adequately responded to by the Justice Department which warrant an affirmative vote on H.Res. 287.

For example, FBI agent David Troutman called one of the State Representatives, asking if another representative was present so he could "call our surveillance off." How did the FBI come to be involved in a search for Texas Democrats trying to stop a partisan manipulation of redistricting orchestrated by Tom DeLay?

The answer may have come from DeLay himself. He said that "bringing in...FBI agents was justified" and that a "U.S. Attorney in Texas" was researching it. But the Justice Department won't tell us whether this is true or whether other resources were utilized.

In addition, The United States Marshals service was reportedly involved. While one marshal has denied there was any official request for help in what he acknowledges was a "state matter," he – and the Justice Department – have refused to say whether any informal request was made. It would be quite valuable if the Committee was able to learn how the U.S. Marshals service came to be involved in this partisan exercise.

The answer again may have been provided by Tom DeLay, who said bringing in the U.S. Marshals "was justified." This conduct is troubling by itself. Even more troubling, however, is the stonewalling by the Justice Department.

The Assistant Attorney General has asserted a new and unprecedented privilege to evade

¹² Office of Inspector General: Report of Investigation (INO3-LA-0662-S).

¹³ Letter from Honorable John Conyers, JR. (D-MI) *et. al.*, to the Honorable John Ashcroft. Attorney General of the United States, (June 18 2003).

Congressional inquiries. He says that he can't tell us who asked the Department to become involved because it would discourage individuals from contacting federal law enforcement agencies about potential violations of federal law.

In other words, if he told us who asked the Justice Department to become involved in partisan politics, that person might be afraid to ask the Justice Department to become involved in partisan politics again. Voting this resolution adversely, dangerously reaffirms the use of inappropriate new privileges by the Department.

The Texas Department of Public Safety destroyed documents possibly in violation of federal criminal laws. The Department of Homeland Security asked the FBI to investigate it. The FBI replied that it was "not interested" in investigating it. Since when is the FBI not interested in obstruction of justice? Again, the Committee is entitled to learn about such matters.

According to another report, Tom DeLay bragged to Republican state officials that he killed a voting rights complaint filed with the Civil Rights Division of the Department of Justice. It is because of statements like this that the Committee's oversight role is so critical, and this is why we are so disappointed that H. Res. 287 was adversely reported by the Committee.

Our concerns about a coverup of improper behavior have only expanded since the Committee markup. The Transportation Department of Inspector General reported late last week that the FAA was heavily involved in the search for the plane used by the Texas Democrats and that Tom DeLay was deeply involved in inducing the federal government to become involved in a partisan squabble. Moreover, late last week a court ruled that the Texas Department of Public Safety lacked the legal authority to track down and arrest the Texas Democrats.

As a result of all of the foregoing, the conclusion could not be more clear. It is this Committee's and the Congress' job, not the job of the Justice Department inspector general or anyone else, to oversee the federal government and the Justice Department. We should do that whether wrongdoers are Republicans or Democrats. This resolution asks for information. The American people have a right to that information. Neither the Justice Department nor any other agency should be allowed to hide it anymore. For these reasons, we dissent.

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